

**REMARKS**

The present amendments and remarks are in response to the Office Action mailed on December 9, 2004. Claims 1-19 were rejected. Claim 20 is withdrawn. Accordingly, 1-20 are currently pending.

Reconsideration of the application is respectfully requested in view of the following responsive remarks. For the Examiner's convenience and reference, the Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

In the Office Action, the following rejections were made:

- (1) claims 1-8 and 17-19 were rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,669,094 (hereinafter "Swanson"); and
- (2) claims 1-8 and 17-19 were rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 6,159,574 (hereinafter "Landvik"); and
- (3) claims 9-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson as applied to claims 1-8 and 17-19 above, and further in view of either U.S. Patent No. 6,219,863 (hereinafter "Loberg") or U.S. Patent No. 5,282,285 (hereinafter "de Gelis"); and
- (4) claims 9-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Landvik as applied to claims 1-8 and 17-19 above, and further in view of either Loberg or de Gelis; and
- (5) claims 12-14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson as applied to claims 1-8 and 17-19 above, and further in view of U.S. Patent No. 6,345,401 (hereinafter "Frydman"); and
- (6) claims 12-14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Landvik as applied to claims 1-8 and 17-19 above, and further in view of Frydman; and
- (7) claims 12-14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson as applied to claims 1-8 and 17-19 above,

and further in view of U.S. Patent No. 5,682,633 (hereinafter "Davis")  
when considering any of U.S. Patent No. 5,797,154 (hereinafter  
"Contreras") or U.S. Patent No. 6,251,493 (hereinafter "Johnson") or  
Frydman; and

- (8) claims 12-14 and 16 were rejected under 35 U.S.C. 103(a) as being  
unpatentable over Landvik as applied to claims 1-8 and 17-19 above,  
and further in view of Davis when considering any of Contreras or  
Johnson or Frydman.

**Remarks to the IDS filed**

The Examiner has stated that references, A4, A5, A6, and A8 provided in the IDS were not considered for failings to provide a date of publication according to 37 C.F.R. 1.97, 1.98 and MPEP § 609. Applicants submit that reference A4 provides a copyright date of 2002, which indicates that the article was published in 2002. Furthermore, references A6 and A7 appear to be published in 2001 which is evidenced by the title of the publications. Accordingly, Applicants respectfully request reconsideration of the references.

**Rejections Under 35 U.S.C. 102(b) and 103(a)**

Before discussing the rejections under 35 U.S.C. 102(b), it is thought proper to briefly state what is required to sustain such a rejection. It is well settled that "[a] claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil of California*, 814 F.2d 628, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987). In order to establish anticipation under 35 U.S.C. §102, all elements of the claim must be found in a single reference. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986), *cert. denied* 107 S.Ct. 1606 (1987). In particular, as pointed out by the court in *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1981), *cert denied*, 469 U.S. 851 (1984), "anticipation requires that each and every element of the claimed invention be disclosed in a prior art reference." "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.* 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

Further, before discussing the obviousness rejection herein, it is thought proper to briefly state what is required to sustain such a rejection. The issue under § 103 is whether the PTO has stated a case of *prima facie* obviousness. According to the MPEP § 2142, the Examiner has the burden and must establish a case of *prima facie* obviousness by showing some motivation in a prior art reference to modify that reference, or combine that reference with multiple references, to teach all the claim limitations in the instant application. Applicant respectfully asserts the Examiner has not satisfied the requirement for establishing a case of *prima facie* obviousness in this rejection.

Rejections over Swanson

The Examiner has rejected claims 1-8 and 17-19 as being anticipated by or, in the alternative, obvious over Swanson. Swanson discloses a mattress having a top layer of viscoelastic polyurethane foam having a low rebound property and temperature sensitivity. (See column 4, lines 45-50). A second layer made from any suitable material offering the property of relative independent support, wherein the second layer has a higher or approximately equal indentation load deflection value than the top layer. (See column 4, lines 50-58). The density of the top layer is 5.8 lb/ft<sup>3</sup> (column 2, line 49) and the thickness of approximately 3 inches, while the thickness of the second layer is 6 inches. Additionally, the two layers may be secured to each other in any conventional manner, such as commercial adhesives which are suitable for such use.

In contrast, the present invention is drawn towards a two layer mattress. The two layer mattress includes a core layer providing a base support and a top layer of viscoelastic foam, disposed directly atop the core layer, having a density of from about 3.0 to about 4.5 lb/ft<sup>3</sup> and a thickness from about 2 to 4 inches. The core layer can have a density of from about 2.0 to about 2.7 lb/ft<sup>3</sup> and a thickness from about 3 to 7 inches. The two layer mattress can provide body support over an ambient temperature range and can be configured to provide the sole mattress support in a bedding system. The lower density top layer claimed in the present invention is not as temperature sensitive as a top layer having a higher density and subsequently can be flexible, molded at ambient temperatures and as a result provide proper body support at room temperatures. Swanson fails to teach a two layer mattress including a viscoelastic top layer having a density in the range of 3.0 lb/ft<sup>3</sup> to 4.5 lb/ft<sup>3</sup> coupled to a core layer possessing densities as currently claimed. In addition, the temperature sensitivity of the viscoelastic foam, having a density of 5.8 lb/ft<sup>3</sup>, as taught in Swanson requires body heat to become moldable. In other words, the mattress as taught in Swanson cannot become pliable to the extent of providing proper body support without being heated by body heat above ambient room temperatures. The present invention, however, can be pliable at room temperatures in which proper body support may be achieved. Swanson fails to teach each and every element of the

presently claimed invention. Accordingly, Applicants respectfully request the rejections be withdrawn.

Applicants further contend that claims 1-8 and 17-19 are not *prima facie* obvious in view of Swanson. As mentioned, Swanson teaches a mattress having a top layer of viscoelastic polyurethane foam having a density of 5.8 lb/ft<sup>3</sup> and a thickness of 3 inches, while exhibiting the properties of low rebound property and temperature sensitivity. A second layer made from any commercially available latex foam product is coupled to the top layer through adhesives. Additionally, Swanson teaches that “[w]hen the top layer comes into contact with a warm surface, such as the skin, the top layer will soften, thereby allowing the top layer to mold to the user’s body...” See column 2, lines 34 – 37. Accordingly, the viscoelastic top layer softens or becomes flexible as the mattress temperature increases above room temperature supplied by the user’s own body heat. In other words, the invention in Swanson cannot provide proper body support at ambient temperatures because it requires an increase in mattress temperature from body heat to properly mold to body contours to create the appropriate body support. This teaching appears to teach away from the presently claimed invention wherein the present invention uses a less dense top layer to provide proper body support at ambient temperatures and does not require body heat to mold to body contours.

In addition, Swanson teaches that the second layer may be comprised of a latex foam material but fails to specifically teach the density of the second layer. As noted above, Swanson only teaches that the second layer has a higher or approximately equal indentation load deflection value than the top layer. This teaching fails to disclose specific values and would require undue experimentation by one skilled in the art to arrive at the presently claimed invention. Therefore, Applicants submit that the present invention is not obvious in view of Swanson because the fails to teach that a less dense top layer can be used to provide proper body support at ambient temperatures nor does it provide motivation to one skilled in the art to modify Swanson to arrive at the presently claimed invention.

#### Rejections over Landvik

The Examiner has rejected claims 1-8 and 17-19 as being anticipated by or, in the alternative, obvious over Landvik. Landvik teaches a laminated support for

pressure-relief including an upper layer of viscoelastic foam. A middle layer of viscoelastic foam having a greater hardness, and a bottom layer of highly resilient polyurethane foam. These layers are sandwiched between two layers of reticulated filter polyurethane foam. The Examiner has specifically cited FIGS. 3 and 7. Figure 3 and 7 illustrate a laminated support where the top layer is viscoelastic foam. After converting the units from Metric to English, the top layer includes a density of 5.2 lb/ft<sup>3</sup>, a thickness of 1/2 inches and a hardness of 2.24 lbf. A middle layer having a density of 5.2 lb/ft<sup>3</sup>, a thickness of 2 1/2 inches and a hardness of 2.92 lbf disposed between the top layer and the bottom layer. The bottom layer has a density of 2.1 lb/ft<sup>3</sup> and a thickness of 3 inches (See column 2, lines 50 – 56). In addition a 2 mm layer of reticulated filter polyurethane foam is adhered to each outer surface of the laminated support (See column 3, lines 5 – 11).

The present invention however, discloses a mattress system including a two layer mattress. The two layer mattress can include a core layer providing a base support and a top layer of viscoelastic foam, disposed directly atop the core layer. The top layer can have a density of from about 3.0 to about 4.5 lb/ft<sup>3</sup> and a thickness from about 2 to 4 inches. The core layer can have a density of from about 2.0 to about 2.7 lb/ft<sup>3</sup> and a thickness from about 3 to 7 inches. In addition, the two layer mattress can provide body support over an ambient temperature range and can be configured to provide the sole mattress support in a bedding system. The present invention as currently claimed can not be anticipated by Figures 3 and 7 disclosed in Landvik because the laminate support shown is a three layer mattress and the top layer is not disposed directly atop the bottom layer. The middle layer illustrated Figures 3 and 7, differs in hardness from the top layer. Therefore, the laminates support illustrated in Figures 3 and 7 are mattresses having three distinct layers. Therefore, Figures 3 and 7 as disclosed in the specification lack the teaching of each and every element of the present invention.

Landvik also discloses a laminated support having two main layers, as shown in Figures 1 and 2. The laminate support illustrated in Figure 1 includes a top layer having a density of 5.3 lb/ft<sup>3</sup>, a thickness of 1/2 inch and a hardness of 2.24 lbf. The bottom layer is attached to the top layer and possesses a density of 6.87 lb/ft<sup>3</sup>, a thickness of 1 1/2 inches and a hardness of 6.7 lbf. Both layers are made from viscoelastic foam. Figure 1 has a primary purpose of being a cushion to be used with

a mattress (See column 2, lines 31 – 35). The narrow thickness and the improper density of the cushion as described would “bottom out” and could not provide proper spine support without an additional support component, such as an existing mattress.

Figure 2 discloses a support which is well suited for use as an overlay which can be placed on top of an existing mattress to provide extra comfort. See column 2, lines 36 – 38. The overlay support is a two layer support system having top layer and a bottom layer constructed from viscoelastic foam and polyurethane foam, respectively. As disclosed in Landvik, the overlay support is intended to be applied to pre-existing mattresses and not intended to be used as the sole mattress.

As mentioned above, the present invention is drawn towards a mattress system having a two layer mattress. The two layer mattress comprises of a top and a core layer where the mattress can provide proper body support at ambient temperature ranges and can be configured to provide the sole mattress support in a bedding system. The two layer mattress as configured can provide sufficient mattress support with out the need for other supporting means, such as pre-existing mattresses or cushion as taught by Landvik. In addition, the Applicants are not aware of any two layer viscoelastic mattress systems that use various mattress support systems, i.e. slat-type supports, as currently claimed. Accordingly, the present invention is not anticipated by Landvik because the reference fails to teach each and every element as claimed. Thus, Applicants respectfully request that the rejections be withdrawn.

Applicants further contend that claims 1-8 and 17-19 are not *prima facie* obvious in view of Landvik. As noted above, Landvik teaches various embodiments of a laminated support article. Of the various embodiments, Landvik teaches a three layer mattress, a two layer overlay and comfort cushion. However, Landvik fails to teach a two layer mattress that can be configured to provide the sole mattress support in a bedding system may or that a two layer mattress can be modified to provide the sole mattress support. Instead, Landvik teaches that all two layer laminate supports are used in combination with an existing mattress to add comfort. Accordingly, the present invention is not obvious in view of Landvik because the reference fails to teach one skilled in the art that it can be modified to arrive at the presently claimed invention. As such, Applicants respectfully request the rejection be withdrawn.

#### Other Rejections

The Examiner has also rejected claims 9-16 under 35 U.S.C. 102(b) and 103(a) in view of several references. However, Applicants submit that claims 9 - 16 depend from now allowable subject matter. As such, the rejection is now rendered moot, and withdrawal of the rejections are respectfully requested by the Applicants.



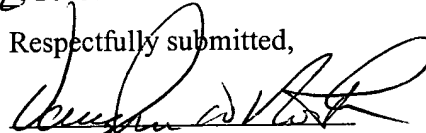
**CONCLUSION**

In view of the foregoing, the Applicants believe that claims 1-19 present allowable subject matter and the withdrawal of all rejections is respectfully requested. If any impediment to the allowance of these claims remains after consideration of the above remarks, and such impediment could be removed during a telephone interview, the Examiner is invited to telephone the undersigned at (801) 566-6633 so that such issues may be resolved as expeditiously as possible.

Please charge any additional fees except for Issue Fee or credit any overpayment to Deposit Account No. 20-0100.

Dated this 11 day of Apr, 2005.

Respectfully submitted,



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